

## ***DISTRIBUTION OF HORSE RACING "BREAKS" REVENUE***

### ***by Craig Thiel, Fiscal Analyst***

---

#### **Introduction**

Under the Horse Racing Law of 1995, the seven pari-mutuel racetracks in the State are required to provide funding to their local unit of government for certain municipal services provided at and near the tracks. In recent years, the amount of funding provided to municipalities by the tracks has exceeded the amount spent by local governments on these services. The levels of expenditures as a percentage of revenue received from the racetracks vary significantly among the municipalities. The "excess" revenue above that needed to provide municipal services to the tracks has been used by the local units of government to fund other local priorities. Recently, questions have been raised about the use of this excess revenue and the role of the Office of Racing Commissioner in the distribution of revenue to municipalities hosting racetracks. The Auditor General recently issued a special report on the distribution and use of horse racing "breaks" revenue.<sup>1,2</sup>

#### **Background**

Under the Racing Law of 1980 (which was recodified by the 1995 law), a percentage of the State wagering tax revenue paid by each racetrack (not to exceed \$900,000 per track) was placed in a restricted fund under the control of the Michigan Department of Agriculture. This restricted fund was then used to finance an annual appropriation that provided grants to municipalities that had racetracks within their borders. The underlying policy for these grants was to be an incentive for those municipalities having racetracks to provide adequate police, fire, and traffic protection at and near the tracks.

The aggregate amount of the grants was limited by an annual appropriation in the Department of Agriculture budget called "Grants to cities with racetracks".<sup>3</sup> The individual grants provided from this appropriation were determined by statute and approximated the amount of the wagering tax each track paid to the restricted fund. In those years when the appropriation was not sufficient to provide the maximum grants allowed under statute, grants were prorated. This occurred in fiscal year (FY) 1991-92 through FY 1994-95. Under the Racing Law of 1980, grants to municipalities with racetracks were limited by the lower of: 1) the annual appropriation, or 2) the amount of wagering tax a racetrack paid to the restricted fund.

The restricted fund often received revenue in excess of the actual amount of grants distributed each year. This occurred throughout the 1980s. As a result, by FY 1987-88 the fund had amassed a balance in excess of \$7.2 million. In FY 1987-88, the Legislature appropriated \$5,755,000 for purposes other than grants to municipalities. Also, \$1.5 million of the balance lapsed to the General Fund for that year.<sup>4</sup> A similar appropriation to the General Fund was made in FY 1992-93.<sup>5</sup>

Under Section 14 of the Racing Law of 1980, municipalities that received a grant were required to file annual reports with the Office of Racing Commissioner detailing the amount of funds received and the expenditures of those funds. The Office of Racing Commissioner was required to supply this information to the Legislature and the Governor.

#### **Payments to Cities and Townships**

Public Act 279 of 1995, the Horse Racing Law of 1995, repealed the Racing Law of 1980 and took effect January 1, 1996. The Horse Racing Law of 1995 changed the source of horse racing-related revenue paid to municipalities for services provided to the tracks. The new law also changed the process by which municipalities received horse racing-related revenue for such services. The policy surrounding payments to municipalities remained the same:

to provide adequate police, fire, and traffic protection for persons and property at and near racetracks.

Section 17(4) of the Horse Racing Law of 1995 requires each racetrack to pay all breaks revenue directly to the municipality in which the racetrack is located. Under the previous law, municipalities received a portion of the State wagering tax. This represented a different financing source for the grants to municipalities with racetracks. Under the Racing Law of 1980, the breaks revenue generated at each track was shared equally by the State and the track.

The distribution of breaks revenue directly to municipalities effectively removed the Legislature from the role of annually establishing the grants through the appropriations process. Also, this provision ensured that each municipality received the full statutorily designated amount of revenue for police, fire, and traffic services associated with a racetrack located within its borders. This change also resulted in additional revenue being available to municipalities for local services around the tracks, as only \$1,745,600 was distributed in 1995.

Under Section 21 of the Horse Racing Law of 1995, municipalities are required to submit reports to the Office of Racing Commissioner detailing the receipt and expenditure of breaks revenue for police, fire, and traffic protection services. The Racing Commissioner is required to include this information in an annual report to the Legislature and the Governor.

Table 1 shows the total breaks revenue paid to municipalities with racetracks and the total reported expenditures for police, fire, and traffic services for calendar years 1996 through 1999, pursuant to Section 21 of the Law. During this time, expenditures as a percentage of breaks revenue received declined from nearly 54% to almost 35%. The Ladbroke DRC track in Livonia closed in January 1999, which partially accounts for the decrease in breaks revenue and associated municipal expenditures.

<b>Table 1</b> <b>Breaks Revenue and Reported Expenditures</b> <b>1996 Through 1999</b>			
<b>Year</b>	<b>Breaks Revenue</b>	<b>Expenditures</b>	<b>Expenditures as % of Revenue</b>
1996	\$2,502,290	\$1,343,809	53.7%
1997	2,373,799	1,209,987	51.0%
1998	2,248,456	1,030,946	45.9%
1999	1,976,331	682,282	34.5%

**Source:** Office of Auditor General

Table 2 provides detail of 1999 data by racetrack. In 1999, breaks revenue paid by the tracks ranged from a high of \$928,612 to the City of Hazel Park to a low of \$11,199 to Isabella Township. Breaks revenue varies directly with the amount of total pari-mutuel wagering at each racetrack. Reported expenditures for police, fire, and traffic services for 1999 ranged from a high of \$152,769 in the City of Hazel Park to a low of \$1,140 in Isabella Township.

To a large extent, local expenditures for police, fire, and traffic services at and near a racetrack are a function of the size of the racetrack and the level of service provided. For the most part, the larger tracks (e.g., Hazel Park and Northville) require more services. Higher attendance levels at these larger tracks generate more traffic. Also, due to their size, larger tracks generally experience higher police and fire incident rates. For these reasons, it is understandable why the larger municipalities report higher levels of expenditures for the services provided at and near their respective tracks.

It is worth noting that expenditures for municipal services can be driven by factors other than the size of a racetrack. For example, variations in the prevailing wages paid can account for the difference in expenditures among municipalities. Similarly, who delivers a given service in a municipality (e.g., public versus private provider) can affect the expenditure level. Whether a track is located in a urban versus a rural setting also can have an impact on expenditure levels.

Table 2 also shows expenditures by local governments as a percentage of the breaks revenue received. Using this measure, the City of Saginaw spent the most at 94.1% and Isabella Township, which hosts a tiny track, spent the least at 10.2%. The City of Hazel Park, which spent only 16.5% of its breaks revenue on services at or near the track, received nearly \$776,000 above the amount needed for police, fire, and traffic services. Unrestricted as to its use, this remaining funding reverted to the local government and was used to support other local priorities. Some local governments used the remaining funding for capital improvements (e.g., public lighting, streets/sidewalks, or vehicles) while others transferred the funding to their general fund to support various general fund operations.

<b>Table 2 Breaks Revenue and Reported Expenditures By Local Units of Government - 1999</b>				
<b>Local Unit of Government</b>	<b>Breaks Revenue</b>	<b>Expenditures</b>	<b>Difference</b>	<b>Expenditure as % of Breaks</b>
Hazel Park	\$928,612	\$152,769	\$775,843	16.5%
Fruitport Twp.	121,952	72,734	49,218	59.6%
Jackson	72,127	44,990	27,137	62.4%
Northville	605,997	221,291	384,706	36.5%
Saginaw	75,392	70,958	4,434	94.1%
Swartz Creek	161,052	118,401	42,651	73.5%
Isabella Twp.	11,199	1,140	10,059	10.2%
<b>Total:</b>	<b>\$1,976,331</b>	<b>\$682,283</b>	<b>\$1,294,048</b>	<b>34.5%</b>

**Source:** Office of Auditor General

Nothing in the Horse Racing Law of 1995 requires a municipality that receives breaks revenue to spend the entire amount on police, fire, and traffic services at and near a racetrack within its border. On the contrary, the Law is silent as to the use of any excess funding. Furthermore, the Law is extremely vague as to the level of service that must be provided. Section 21 of the Law requires "adequate" police, fire and traffic protection of persons and property, but does not define "adequate".

Recently, the distribution of breaks revenue and its use by certain municipalities for purposes other than police, fire, and traffic protection have generated interest within the Legislature. Public Act 291 of 2000, an FY 1999-2000 supplemental appropriations act, required the Office of Racing Commissioner (ORC) to report, by October 15, 2000, the amount of breaks revenue paid by each racetrack to municipalities.

Another piece of legislation, introduced in September 2000, proposed to alter the distribution of breaks revenue and grants to municipalities with racetracks. Under this proposal, all breaks revenue would be paid directly to a newly created Breaks Escrow Fund, to be administered by the ORC. The ORC would spend money from the Fund to pay expenses related to police, security, safety, fire, and emergency services provided to a track. Municipalities

or counties that provide such services to the tracks would be eligible to receive an administrative fee of not more than 10% of the cost of the services in addition to reimbursement for the services provided. The remaining money in the Breaks Escrow Fund would be spent by the ORC on capital improvements at racetracks, improvements to local communities that host racetracks, and/or promotion of the horse racing industry.<sup>6</sup>

Most recently, the Office of the Auditor General issued a special report at the request of Senators George A. McManus, Jr. and Leon Stille on the distribution and use of horse racing breaks. The special report contained a number of findings. First, the Horse Racing Law of 1995 does not require a verification that all breaks revenue was actually paid to local units of government. Second, local units of government reported only protection expenditures and not other expenditures made from breaks revenue. Third, neither the Office of Racing Commissioner nor the Horse Racing Law of 1995 provides direction to local units of government on allowable protection expenditures. Fourth, the Law does not authorize the ORC to verify how local units of government use breaks revenue.

## **Conclusion**

It is clear from reading the Horse Racing Law of 1995 that there is no provision for the use of the breaks revenue in excess of that needed to provide "adequate" police, fire, and traffic protection around racetracks. It is unknown whether this was the intent of the legislation that provided breaks revenue directly to the municipalities. Also, the Law provides the ORC only with a reporting role on the distribution of breaks revenue. To address many of the findings of the recent Auditor General report, amendments to the Horse Racing Law of 1995 would be required to provide the ORC with an administrative and/or an oversight role in the distribution of breaks revenue to municipalities, or to redirect the excess breaks revenue.

---

## **Notes:**

- 1) "Distribution and Use of Horse Racing 'Breaks'", Office of the Auditor General, November 2000.
- 2) "Breaks" means the cents over any multiple of 10 otherwise payable to a patron on a wager of \$1.00. For example, if a winning bet is computed to pay \$2.54, the bettor receives \$2.50 and the \$.04 is returned to the local government in which the track is located.
- 3) In OAG 1989 No. 6603, the Attorney General opined that the Legislature had the authority to limit the aggregate amount of the grants to municipalities.
- 4) Section 301 of PA 289 of 1988, an FY 1987-88 supplemental appropriation.
- 5) Section 212 of PA 156 of 1992.
- 6) Senate Bill 1375 was referred to, but not reported from, the Senate Committee on Farming, Agribusiness and Food Systems.